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The United Nations Human Rights Council: Issues for Congress

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The United Nations Human Rights Council: Issues for Congress

Summary

On March 15, 2006, the U.N. General Assembly passed a resolution replacing the Commission on Human Rights with a new Human Rights Council (the Council). The U.N. Secretariat and some governments, including the United States, view the establishment of the Council as a key component of comprehensive U.N. reform. The Council was designed to be an improvement over the Commission, which was widely criticized over the composition of its membership when perceived human rights abusers were elected as members. The General Assembly resolution creating the Council, among other things, increases the number of meetings per year; reduces the number of Council seats from 53 to 47; and introduces a “universal periodic review” by the Council to assess each Member State’s fulfillment of its human rights obligations and commitments. Council members are elected to a three-year term by an absolute majority in the U.N. General Assembly.

One-hundred-and-seventy countries voted in favor of the resolution to create the Council. The United States was one of three countries to vote against the resolution, stating that the Council was no better than the Commission and that it lacked mechanisms for “maintaining credible membership.” In addition, the Bush Administration decided the United States would not run in the first Council elections held in May 2006. Despite these initial concerns, the Administration has said it will continue to fund and support the work of the Council, and may consider running in the 2007 election depending upon the progress of the Council in the next year. Currently, the United States is an observer to the Council and has no voting rights, though it can submit proposals for vote at the request of any Council member.

The first meeting of the Council was held in Geneva, Switzerland, June 16 to 30, 2006, and participants addressed a mixture of substantive and procedural issues. All mandates and mechanisms from the Commission were extended for one year to prevent gaps between the work of the Council and the Commission. The Council also established working groups on the universal periodic review process and the review of existing mandates and mechanisms from the Commission.

The reaction of non-governmental organizations, human rights groups, and governments to the new Council can be described as cautiously optimistic. Some continue to question the election of perceived human rights abusers, such as China and Cuba, to the Council. However, most agree that the true worth and effectiveness of the Council will be determined by the progress made in its first year of work.

Congress has maintained an ongoing interest in the credibility and effectiveness of the Council in the context of both human rights and broader U.N. reform. Legislation has been proposed that would withhold Council funding if certain criteria are not met. Due to the nature of U.N. budget mechanisms, withholding Council funds would be a largely symbolic gesture and may have little or no effect on the Council’s operational work. It is expected that congressional interest in this issue will continue to develop as the Council holds its first year of meetings and expected U.N. reform efforts move forward. This report will be updated as events occur.

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The United Nations Human Rights Council: Issues for Congress

Background

Overview of the U.N. Commission on Human Rights¹

The U.N. Human Rights Commission (the Commission) was the primary intergovernmental policymaking body for human rights issues before it was replaced by the U.N. Human Rights Council (the Council) in 2006. Created in 1946 as a subsidiary body of the U.N. Economic and Social Council (ECOSOC),² the Commission's initial mandate was to establish international human rights standards and develop an international bill of rights. One of the Commission's notable successes was the Universal Declaration of Human Rights, adopted by the U.N. General Assembly on December 10, 1948.³ During its tenure, the Commission played a key role in developing a comprehensive body of human rights laws and regulations.⁴ Over time, its work evolved to address specific human rights violations and complaints as well as broader human rights issues. It developed a system of special procedures to monitor, analyze and report on human rights violations. The procedures addressed country-specific human rights violations, as well as "thematic" crosscutting human rights abuses such as racial discrimination, religious intolerance, and denial of freedom of expression.⁵

In recent years, controversy developed over the human rights records of Commission members. Countries widely perceived as systematic abusers of human rights were elected as members. In 2001, Sudan, a country broadly criticized by

¹ For further information on the background and evolution on the Commission on Human Rights, see CRS Report RS20110, *The United Nations Commission on Human Rights: Background and Issues*, by Vita Bite (archived; available from the author).

² ECOSOC is a principal organ of the United Nations that coordinates the economic and social work of the specialized U.N. agencies. It is composed of 54 member governments elected to three-year terms by the U.N. General Assembly.

³ The Universal Declaration of Human Rights was adopted by General Assembly resolution 217 A (III), December 10, 1948, and can be viewed at [<http://www.un.org/Overview/rights.html>].

⁴ This includes the International Covenant on Civil and Political Rights, which entered into force on March 23, 1976, and the International Covenant on Economic, Social, and Cultural Rights, which entered into force on January 3, 1976. The United States signed both treaties on October 5, 1977, and ratified the Covenant on Civil and Political Rights on June 8, 1992.

⁵ Other examples of thematic mandates include the right to development; the right to education; the rights of migrants; and the right to food.

governments and human rights groups for ethnic cleansing in the Darfur region, was elected. Sudan was reelected in 2004, prompting outrage from human rights organizations and causing the United States to walk out of the Commission chamber in protest.⁶ These instances significantly affected the Commission's credibility. Critics claimed that countries used their membership to deflect attention from their own human rights violations by questioning the records of others. Some members were accused of bloc voting and excessive procedural manipulation to prevent debate of their human rights abuses.⁷ In 2005, the collective impact of these controversies led U.N. Secretary-General Kofi Annan to propose the idea of a new and smaller Council to replace the Commission. On March 15, 2006, the U.N. General Assembly approved a resolution to dissolve the Commission and create the Council in its place. The Commission held its final meeting in Geneva, Switzerland, on June 16, 2006, where, among other actions, it transferred its reports and responsibilities to the new Council.

The Office of the High Commissioner for Human Rights (OHCHR) is a department within the U.N. Secretariat headed by a High Commissioner for Human Rights, currently Louise Arbor of Canada. Its mandate is to promote and protect human rights worldwide through international cooperation, and through the coordination and streamlining of human rights efforts within the U.N. system. The OHCHR provided general support to the Commission and will continue to do so for the Council, working specifically with Council experts to document human rights violations.

The United States and U.N. Human Rights Efforts

The United States is generally supportive of human rights mechanisms at the United Nations. It played a key role in creating the Commission on Human Rights in 1946, and was a member and active participant of the Commission until it lost its first election in 2001. It was reelected to the Commission the following year. In 2005, the United States supported doubling the U.N. regular budget resources of OHCHR. This increased the U.N. regular budget for human rights activities from \$64 million in 2004-2005 to \$83 million in 2006-2007. Congress has also demonstrated continued support for U.N. human rights bodies, often using the mechanisms and special procedures of the Commission to call attention to the human rights abuses of countries such as Cuba and China.⁸ In addition, Congress receives

⁶ Press briefing by Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

⁷ "A New Chapter for Human Rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council," *International Service for Human Rights* and *Friedrich-Ebert-Stiftung*, June 2006.

⁸ Examples include H.Con.Res. 83, introduced on March 3, 2005, Urging the appropriate representative of the United States to the 61st session of the U.N. Commission on Human Rights to introduce a resolution calling upon the Government of the People's Republic of China to end its human rights violations; and H.Res. 91, passed/agreed to in the House of Representatives on April 3, 2001, Urging the President to make all necessary effort to obtain passage during the 2001 meetings of the Commission on Human Rights of a resolution
(continued...)

annual Country Reports on Human Rights Practices from the Secretary of State as mandated by the Foreign Assistance Act of 1961.⁹ The Secretary of State is required, among other things, to submit reports on countries which are members of the United Nations.

There have been instances when both Congress and past Administrations have been critical of the Commission. In 1997, controversy emerged between the U.S. government and the Commission when the Commission appointed a Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions to analyze how the death penalty is implemented in the United States.¹⁰ The Rapporteur reported that economic status, ethnicity, and racial discrimination were indicators for death penalty verdicts, reportedly prompting Senator Jessie Helms to declare the Special Rapporteur's mission "an absurd U.N. charade."¹¹

In 2001, more controversy followed when the United States was not elected to the Commission and widely perceived human rights violators such as Pakistan, Sudan, and Uganda were elected. The Bush Administration and Congress were frustrated and disappointed by the election outcome. The House of Representatives reacted with a Foreign Relations Authorization Act amendment that linked payment of U.S. arrears to the United Nations with the United States regaining a seat on the Commission.¹² The Administration, however, stated it would not link U.S. payment of U.N. dues and arrears to the outcome of the Commission elections.¹³ Given the controversy over the Commission, both Congress and the Administration supported the U.N. Secretary-General's 2005 proposal to disband the Commission and create a new Council.

The U.N. Human Rights Council and U.N. Reform

The establishment of the U.N. Human Rights Council is part of a comprehensive U.N. reform effort by the U.N. Secretary-General Annan and Member States. In March 2005, the Secretary-General outlined a plan for U.N. reform in his report, *In Larger Freedom: Towards Development, Security, and Human Rights for All*. He presented human rights, along with economic and social development and

⁸ (...continued)

condemning the Cuban government for its human rights abuses.

⁹ Country Reports on Human Rights Practices are submitted to the Speaker of the House of Representatives and the Senate Committee on Foreign Relations in compliance with Section 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended.

¹⁰ Bacre Waly Ndiaye, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, U.N. document E/CN.4/1998/68/Add.3, January 22, 1998.

¹¹ Elizabeth Olson, "U.N. Report Criticizes U.S. for "Racist" Use of Death Penalty," *The New York Times*, April 7, 1998.

¹² For more information on this congressional action, see CRS Report RS20110, *The United Nations Commission on Human Rights: Background and Issues*, by Vita Bite, p. 3-4 (archived; available from the author).

¹³ Press Conference of the President, Office of the Press Secretary, The White House, May 11, 2001.

peace and security, as one of three “pillars” upon which to base the work of the United Nations. In September 2005, heads of state and other high-level officials met for the World Summit at U.N. Headquarters in New York to address issues of development, security, human rights, and reform. The Summit Outcome document listed several mandates for “Strengthening the United Nations,” including reform of the U.N. Security Council, management structure, and human rights bodies. In particular, the Outcome document mandated the creation of a new Council as part of broader U.N. reform.

The United States also views the Council as a critical element of overall U.N. reform. The Bush Administration identified the establishment of a new Council as a key reform priority necessary to achieve a “strong, effective, and accountable organization.”¹⁴ Congress has also identified U.N. human rights reform as a significant component of overall U.N. reform. Recent proposed legislation in the House of Representatives and in the Senate has linked payment of U.N. assessed dues with the fulfillment of specific reforms, including those involving human rights.¹⁵

The U.N. Human Rights Council

Mandate and Responsibilities

On March 15, 2006, the U.N. General Assembly passed resolution A/RES/60/251, which established the Council and outlined its purpose and responsibilities.¹⁶ Under the resolution, the Council is responsible for “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.” The Council will “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.” It will also promote and coordinate the mainstreaming of human rights within the U.N. system. In order to achieve the above goals, the Council will undertake a universal periodic review of each U.N. Member State’s fulfillment of its human rights obligations and commitments. The review will be a “cooperative mechanism” based on a dialogue between the reviewers and the countries involved. Each member will undergo a periodic review during the term of its membership. The Council is tasked with developing guidelines for the universal periodic review process within one year of its first session.

¹⁴ “U.S. Priorities for a Stronger, More Effective United Nations,” U.S. Department of State publication, June 17, 2005. Other Administration reform priorities included budget, management, and administrative reform, Democracy initiatives, and the creation of a comprehensive Convention on Terrorism. Further information on U.S. policy toward U.N. reform can be found at [<http://www.un.int/usa/reform-un.htm>].

¹⁵ See “Legislation Appendix” for a full list of current proposed legislation.

¹⁶ One hundred and seventy parties voted in favor of the U.N. General Assembly resolution creating the Council, four voted against (Israel, Marshall Islands, Palau, and the United States), and three abstained (Belarus, Iran, and Venezuela).

The resolution also ensures adequate transition of responsibilities from the Commission on Human Rights to the new Council. Like the Commission, the Council will continue to collaborate with the OHCHR. It will work to maintain and improve the system of special mandates, expert advice, and complaint procedures instituted by the Commission. The Council shall also:

- review all the mandates, mechanisms, and functions of the Commission within one year of its first session;
- promote human rights education, advisory services, technical assistance, and capacity building with relevant Member States;
- serve as a forum for dialogue on thematic human rights issues and recommend opportunities for the development of international human rights law to the U.N. General Assembly; and
- promote the full implementation of human rights obligations by Member States, and follow-up on human rights commitments from other U.N. conferences and summits.¹⁷

Structure and Composition

Many crucial details related to the work of the Council, such as its mechanisms, procedures, framework, and system of universal periodic review will be debated and determined by Council members during its first year. This section addresses what is known about the current structural elements of the Council. Key differences between the Council and the Commission are noted where relevant.

Status Within U.N. Framework. Under the General Assembly resolution, the Council is designated a subsidiary body of the General Assembly, whereas the Commission was a subsidiary body of ECOSOC. This change significantly enhances the standing of human rights within the U.N. framework. In its new capacity, the Council will report directly to the General Assembly's 192 members instead of through ECOSOC's 54 members. U.N. Secretary-General Annan stated that eventually he would like to see the Council become a principal organ of the United Nations in the same vein as the Security Council or Secretariat.¹⁸

Membership. The Council is composed of 47 members apportioned by geographic region as follows: 13 from African states; 13 from Asian states; six from Eastern Europe states; eight from Latin America and the Caribbean states; and seven from Western European and other states. Members are elected for a period of three years and may not hold a Council seat for more than two consecutive terms. If a Council member commits "gross and systematic violations of human rights," the General Assembly may suspend membership with a two-thirds vote of members present. The Commission was composed of 53 Member States elected by members of the ECOSOC. Countries served three year terms with no term limits. Like the

¹⁷ The mandates and responsibilities are drawn from U.N. document, A/RES/60/251, March 15, 2006.

¹⁸ "'The Eyes of the World Are Upon You,' Secretary-General says in address to first meeting of Human Rights Council," U.N. Press Release, June 19, 2006.

Council, the Commission created a formula to ensure equitable distribution of seats by region.¹⁹

Elections. All U.N. Member States are eligible to run for election to the Council. Countries are elected through secret ballot by the General Assembly with an absolute majority (97 out of 192 votes). When voting, the resolution instructs countries to consider “the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments.” Countries submitting their names for election must affirm their commitment to human rights with written pledges.

A key difference between the Council and the Commission is the direct election of Council members by the U.N. General Assembly. Under the Commission, candidates were first nominated by their regional groups and then the nominees were submitted for election by members of ECOSOC. Regional groups often sent the same number of nominees to the election as there were seats available. This forced some Member States to cast votes for countries with questionable human rights records in order to fill all regional group seats. The first Council elections were held on May 9, 2006. See **Table 1** for a list of members grouped by region and duration of membership. The next election will be held in June 2007, and 14 of the 47 Council seats will be available.

Structure. At the inaugural session, the Council elects a president for a one-year term. The president will preside over the election of four vice-presidents representing other regional groups in the Council.²⁰ The president and vice-presidents form the Council “Bureau.” The presidency rotates among different Bureau members on an annual basis. The president appoints experts, rapporteurs, and working groups to examine human rights issues. The current president is Ambassador Luis Alfonso de Alba of Mexico. Under the Commission, the role of “president” was held by a chairman.

Meetings. The Council is headquartered in Geneva, Switzerland, and will meet for three or more sessions per year for ten weeks or more, including a main session. It can hold special sessions at the request of any Council member with the support of one-third of the Council membership. By contrast, the Commission on Human rights met in Geneva once a year for approximately six weeks, and since 1990 special sessions were held upon request.²¹

¹⁹ Regional distribution of seats on the Commission on Human Rights was as follows: 15 members from African states; 12 from Asian states; five from Eastern European states; 11 from Latin America and Caribbean states; and 10 from Western Europe and other states.

²⁰ Current Vice-Presidents are: Tomas Husak of the Czech Republic (Eastern European states), Mohammed Loulichki of Morocco (African states), Blaise Godet of Switzerland, (Western Europe and Other states), and Musa Burayzat of Jordan (Asian states).

²¹ Examples of Special Sessions under the Commission included Situation of human rights in the territories of the former Yugoslavia (1992); Situation of human rights in Rwanda (1994); Situation in East Timor (1999); and “Grave and massive violations” of the human rights of the Palestinian people by Israel (2000). More information on these sessions is (continued...)

Reporting. The Council will submit annual reports directly to the General Assembly. In five years, the Council is also required to review and report to the General Assembly on its “work and functioning.” The Commission submitted reports primarily to ECOSOC, a limited membership body, which reported Commission activities to the General Assembly.

Rules of Procedure. The Council will follow the rules of procedure created for committees of the General Assembly.²² Procedures that relate to the participation of observer states, international organizations, non-governmental organizations (NGOs), specialized agencies, and human rights institutions will fall under the practices that were observed by the Commission.²³ These rules encourage consultation and interaction at Council sessions among Council members, observing U.N. Member States, NGOs, and other relevant organizations. Countries who are not Council members do not have voting rights.

The Sub-Commission for the Promotion and Protection of Human Rights. The Sub-Commission was the main subsidiary body of the Commission, and it is currently operating in the same capacity for the Council. The Sub-Commission undertakes human rights studies, identifies and analyzes potential human rights issues, and assists the Council with its work when directed. It consists of 26 independent experts elected for four-year terms and holds an annual four-week session in Geneva attended by observers from Member States, human rights groups, U.N. bodies, NGOs, and other organizations.²⁴

First Session (June 2006)

The Council held its first meeting in Geneva, Switzerland, from June 16 to 30, 2006. The Council adopted eight resolutions, three decisions, and two statements by Council President Luis Alfonso de Alba. A high-level meeting was held during the first four days of the session. During the sessions, parties exchanged views on a mixture of substantive and procedural issues, including the nature of the universal periodic review process, the role of human rights defenders in protecting and promoting human rights, and the overall implementation of the General Assembly resolution that created the Council.²⁵ Countries also discussed special procedures, reviewed the mandates and mechanisms inherited from the Commission, and

²¹ (...continued)

available at [<http://www.ohchr.org/english/bodies/chr/special-sessions.htm>].

²² General Assembly Rules of Procedure can be viewed at [http://www.ohchr.org/english/bodies/hrcouncil/docs/gaA.520.Rev.15_En.pdf].

²³ The Commission on Human Rights followed ECOSOC rules of procedure that can be viewed at [http://www.ohchr.org/english/bodies/hrcouncil/docs/ECOSOC.rules_En.pdf].

²⁴ Additional information on the Sub-Commission for the Promotion and Protection of Human Rights can be found at [<http://www.ohchr.org/english/bodies/subcom/index.htm>].

²⁵ “Human Rights Council concludes first session,” U.N. Media Centre, June 30, 2006.

renewed several working group mandates.²⁶ Additional outcomes from the first session include, among other things:

- a one-year extension for all Council and Sub-Commission mandates, mechanisms, functions, and responsibilities previously under the Commission;
- creation of an intersessional open-ended Working Group to review and make recommendations on these existing mandates, mechanisms, functions, and responsibilities inherited from the Commission;
- adoption of the International Convention for the Protection of all Persons from Enforced Disappearance, and the U.N. Declaration on the Rights of Indigenous Peoples, which were forwarded to the General Assembly for adoption;
- creation of an intersessional, open-ended Working Group to establish the components and procedures of the universal periodic review process; and
- adoption of a draft framework for a one-year Programme of Work for the Council.

The only country-specific resolution considered or passed at the first Council session involved Israel and the Arab Territories. This issue was identified for discussion by Council President Luis Alfonso de Alba based on consultations with other Council member and observer States. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), introduced a resolution requesting special rapporteurs to report on Israeli human rights abuses in Palestine and Other Occupied Arab Territories at the next Council session and in subsequent sessions. The Council adopted the resolution with a vote of 29 in favor, 12 against, and 5 abstentions.²⁷ A Special Session was held on July 5, 2006 in Geneva, where the Council agreed to send a group of experts and special rapporteurs to the Palestinian Territories to examine potential Israeli human rights abuses.²⁸ In addition, on August 8, 2006, the Council announced it would hold a second Special Session addressing Israeli human rights abuses in Lebanon. The request for the session was submitted by Tunisia on

²⁶ The Council welcomed the report of the Working Group on Optional Protocol to the Covenant on Economic, Social, and Cultural Rights and extended its mandate for two years. It endorsed the recommendations and conclusions of the Working Group on the Right to Development, renewing its mandate for one year. The Working Group on the Effective Implementation of the Durban Declaration was extended for three years.

²⁷ Countries in voting in favor of the resolution were Algeria; Argentina; Azerbaijan; Bahrain; Bangladesh; Brazil; China; Cuba; Ecuador; Gabon; India; Indonesia; Jordan; Malaysia; Mali; Mauritius; Mexico; Morocco; Pakistan; Peru; Philippines; Russian Federation; Saudi Arabia; Senegal; South Africa; Sri Lanka; Tunisia; Uruguay; and Zambia. Countries voting against were Canada; Czech Republic; Finland; France; Germany; Japan; Netherlands; Poland; Romania; Switzerland; Ukraine; and the United Kingdom. Countries abstaining were Cameroon; Ghana; Guatemala; Nigeria; and the Republic of Korea.

²⁸ More information on the first Special Session can be found at [<http://www.ohchr.org/english/bodies/hrcouncil/specialsession/index.htm>].

behalf of the Group of Arab States.²⁹ It is expected the session will be held in Geneva from August 10-11, 2006.³⁰

The second Council session will be held in Geneva, Switzerland from September 18 to October 6, 2006. The Council will hear progress reports from the newly established Working Group on Universal Periodic Review and Working Group on Mandates, Mechanisms, Functions and Responsibilities. It will consider reports from the Sub-Commission, OHCHR, and others, as previously requested by the Commission on Human Rights. Council members will also hear reports from special rapporteurs on freedom of religion or beliefs and contemporary forms of racism. In the coming year, the Council will continue to develop the framework and responsibilities necessary to fulfill its mandate and complete the transition from the Commission.

U.S. Policy Towards the Council

Overview. Overall, the United States supports the work of the Council and views it as an improvement over the Commission on Human Rights.³¹ However, the United States opposed the final Council structure, and was one of four countries to vote against the U.N. General Assembly resolution creating the Council. In a statement made after the vote, U.S. Ambassador to the United Nations John Bolton called the U.S. position a “matter of principle,” and said the United States could not support the resolution because it lacked “stronger mechanisms for maintaining credible membership.” He stated that the United States did not have confidence that the new Council would be better than its predecessor, but at the same time indicated the United States would work with other Member States to ensure the Council is strong and operates as effectively and efficiently as possible.³²

During negotiations for the resolution creating the Council, the United States supported several measures it believed would make it more difficult for human rights abusers to be elected. It agreed with Secretary-General Annan’s proposal that a two-thirds vote should be required in the General Assembly for election instead of an absolute majority, noting that election by an absolute majority would make it easier for a country to be elected to the Council than to be removed. The United States also supported “exclusionary criteria” for Council membership, arguing that Member States under Security Council sanctions for human rights abuses or acts of terrorism should not be eligible to run for a Council seat. Additionally, the United States felt that there should be fewer than 47 seats to further reduce the possibility that human rights abusers were elected. It was disappointed with the reduction of

²⁹ A copy of Tunisia’s request for a second Special Council Session can be found at [<http://www.ohchr.org/english/bodies/hrcouncil/docs/specialsession/2ndspecial-session.pdf>].

³⁰ “U.N. rights forum to hold special session on Lebanon,” *Reuters*, August 8, 2006.

³¹ Remarks on the Human Rights Council Elections by Kristen Silverberg, Assistant Secretary for International Organization Affairs, U.S. Department of State, May 17, 2006.

³² Drawn from Ambassador Bolton’s statement in the U.N. provisional verbatim record. U.N. document, A/60/PV.72, March 15, 2006, p. 6.

seats in the Western European and Others regional group (to which the United States belongs) from ten to seven.

Despite these concerns, the United States expressed support for several components of the Council. It agreed with the Council's enhanced status in the U.N. system as a subsidiary body to the General Assembly. The United States also supported the increase in number of Council meetings per year, saying it could give the Council the flexibility to respond immediately to pressing human rights issues.

U.S. decision not to participate in the first election. On April 6, 2006, the United States announced that it would not run for a Council seat in the first election. A State Department spokesman stated, "There are strong candidates in our regional group, with long records of support for human rights, that voted in favor of the resolution creating the Council. They should have the opportunity to run."³³ State Department officials admitted that if the United States ran, losing the election was a possibility. They determined that the United States would most likely be elected with a good lobbying effort (though it was not guaranteed). Officials said that instead of focusing U.S. political capital on getting elected, the United States could more effectively leverage its resources by campaigning against candidates with poor human rights records and in favor of those with a demonstrated commitment to human rights.³⁴ When the election results were announced, the United States stated that while several countries elected to the Council lacked "a genuine commitment to the protection and promotion of human rights,"³⁵ it was pleased that countries like Iran and Venezuela were not elected.³⁶

Congressional Reaction. Congressional response to the Administration's decision not to run in the first Council election has been mixed. Representative Tom Lantos (D-CA), member of the House International Relations Committee, reportedly stated that the decision not to run was "a major retrenchment in America's long struggle to advance the cause of human rights around the world and it is a profound signal of U.S. isolation at a time when we need to work cooperatively with our Security Council Partners."³⁷ Representative Henry Hyde (R-IL), Chairman of the House International Relations Committee and a strong advocate of U.N. reform, also supported U.S. membership on the Council. At a March 27, 2006 news conference

³³ Press Statement by Sean McCormack, Spokesman, U.S. Department of State, April 6, 2006.

³⁴ Drawn from a press briefing by Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

³⁵ The introduction to the 2005 State Department Country Reports on Human Rights Practices listed several countries elected to the Council that were cited for their poor human rights records. They included Azerbaijan, Cuba, China, Ecuador, Pakistan, and Russia. Other Council members such as Saudi Arabia and Cameroon were also cited for their poor human rights records. Country Reports can be viewed at [<http://www.state.gov/g/drl/hr/>].

³⁶ Press Statement by Sean McCormack, Spokesman, U.S. Department of State, May 11, 2006.

³⁷ Warren Hoge, "U.S. Won't See a Seat on the U.N. Rights Council," *New York Times*, April 6, 2006, p. 6.

at U.N. Headquarters, Representative Hyde is quoted as saying, “I think we should engage in the process.... It is the best that’s available and you do what you can with what you have at hand.”³⁸ At the same time, other Members of Congress have been supportive of the decision not to run. On March 31, 2006, Senate Majority Leader Bill Frist (R-TN) wrote a letter to President Bush stating that joining the Council “undermines our own [the United States] credibility and confers unwarranted legitimacy on this new body.”³⁹

U.S. Position on the Sub-Commission for the Promotion and Protection of Human Rights. On May 15, 2006, Mark Wallace, the U.S. Representative for U.N. Management and Reform, called for the elimination of the Sub-Commission for the Promotion and Protection of Human Rights and its subsidiary bodies.⁴⁰ He stated that the work of the experts and working groups were duplicative under the Council. He said that the Sub-Commission “disregards directives and guidance from its parent body,” and that its reports do not reflect the interest of Member States, but “the personal interests of the members of the Sub-Commission, who in some cases are simple government officials posing as ‘independent experts’ in contravention of U.N. rules.”⁴¹ This policy is consistent with some broader United States efforts to eliminate mechanisms it believes to be burdensome to the U.N. process. It also reflects recent controversy over Jean Ziegler, a Sub-Commission expert from Switzerland, who is alleged by the United States and Canada to have defended countries widely perceived as human rights abusers.⁴²

Future U.S. Role. Though the Bush Administration remains “constructively skeptical,” that the Council will be an improvement over the Commission, it will continue to fund and support the Council.⁴³ During the Council’s first year of work, the United States plans to collaborate with like-minded members and observe the work of the Council. If the Council appears more credible and productive than the Commission, it will consider running for a seat in 2007. The United States believes the special rapporteur system and country-specific resolutions are important mechanisms from the Commission that should be continued under the Council.⁴⁴ Congress remains highly interested in the work of the Council both as a mechanism for addressing human rights abuses and as an element of broader U.N. reform.

³⁸ Colum Lynch, “U.S. Will Not Join U.N. Rights Council,” *The Washington Post*, April 7, 2006, p. A16.

³⁹ Letter from Senator Bill Frist to President George W. Bush, March 30, 2006, available at [<http://www.centerforsecuritypolicy.org/FristHRC.pdf>].

⁴⁰ Subsidiary bodies include the Working Groups on Minorities, the Working Group on Contemporary Forms of Slavery, and the Working Group on Indigenous Populations.

⁴¹ Press statement by Mark D. Wallace, U.S. Representative for U.N. Management and Reform, U.S. Mission to the United Nations, U.S. Department of State, May 15, 2006.

⁴² Steven Edwards, “Harper urged to block U.N. appointment: Human rights groups oppose controversial Swiss Politician,” *The National Post*, April 13, 2006.

⁴³ Drawn from a press briefing of Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

⁴⁴ *Ibid.*

Congressional interest and engagement is expected to continue as the Council moves forward with its agenda. Ultimately, future U.S. policy toward the Council may depend on whether Congress and the Administration view the Council's first year of work as effective and credible.

Response from Organizations and Governments

Reaction from Human Rights Groups and Other Organizations.

Response to the Council from a majority of NGOs, human rights groups, and other relevant agencies and organizations appears to be cautiously optimistic. Some groups share common concerns about the Council's work, however, and one source of apprehension is the composition of Council membership. Though the new membership criteria discouraged some countries from running, several perceived human rights abusers ran for seats and were elected to the Council.⁴⁵ Some groups were also concerned about the increase in frequency of the Council meetings. While they supported the increase and believed it would make the Council more effective, they worried that smaller NGOs and human rights groups would have a difficult time obtaining funds to attend these meetings.⁴⁶ Another common concern expressed by groups was the continued and active participation of NGOs and other relevant parties and organizations in the Council process.⁴⁷

Proponents of the Council suggested that the decision of perceived human rights abusers such as Sudan, North Korea, and Zimbabwe not to run for Council election was an early indicator of the Council's success.⁴⁸ Supporters also emphasized the importance of the universal periodic review process, observing that since every country is subject to periodic review, there may be less selectivity and targeting of specific countries in resolutions. Some groups were pleased that Council members will undergo a periodic review of their human rights record within their term of membership. As a result of this new mechanism, a country with a questionable human rights record could be subject to an immediate and comprehensive human rights review. Some also observe that the presence of many perceived promoters and protectors of human rights on the Council may positively influence members with poorly perceived human rights records.

Many human rights groups and NGOs were surprised and disappointed with the U.S. vote against the General Assembly resolution creating the Council.⁴⁹ Some

⁴⁵ Human Rights Watch stated that seven of the 65 members running for a Council seat were "unworthy," of membership due to poor human rights records. They included Azerbaijan, China, Cuba, Iran, Pakistan, Russia, and Saudi Arabia. Only Iran was not elected.

⁴⁶ Frederic Burnand, "Geneva NGOs Brace for New U.N. Rights Body," *Swiss Info*, March 23, 2006.

⁴⁷ "Briefing Paper on Asian Candidates to the New Human Rights Council Membership," *FORUM-ASIA*, May 8, 2006, p. 3.

⁴⁸ Edith M. Lederer, "Groups Hail New U.N. Human Rights Council," *Associated Press*, May 8, 2006.

⁴⁹ Ten human rights groups wrote a letter to Secretary of State Condoleezza Rice urging U.S. (continued...)

called the subsequent U.S. decision not to run in the first election a “missed opportunity,” noting that the first year of the Council is most important because the procedures and future work are established during that time.⁵⁰

Reaction from Governments. There was a wide range of reactions from U.N. Member States regarding the establishment of the Human Right Council. A main point of contention was the number of votes required for election.⁵¹ Overall, most parties supported the mainstreaming of human rights issues into the U.N. system and agreed that the Council should be elevated to a subsidiary body of the General Assembly within the U.N. system. Member States that were consistent targets of country-specific resolutions under the Commission on Human Rights, including China and Iran, opposed the “politicization and finger-pointing” they said were associated with country resolutions.⁵² Most countries agreed that the resolution creating the Council was a fair compromise, and that the true worth of the Council would be determined through its future work.

Some governments were disappointed with the U.S. decision to vote against the resolution creating the Council.⁵³ The United Kingdom and other European Union members actively lobbied the United States to support the resolution.⁵⁴ U.S. Deputy Assistant Secretary of State Mark Lagon noted that a number of countries approached the United States about running and offered their support in both the first election and future elections.⁵⁵ Some governments attempted to link the U.S. decision not to run with its alleged human rights abuses toward prisoners in the Guantanamo Naval Base in Cuba and Abu Ghraib in Iraq.⁵⁶

⁴⁹ (...continued)

support of the resolution. The letter is available at [<http://hrw.org/english/docs/2006/02/24/usint12716.htm>].

⁵⁰ Maggie Farley, “U.S. Won’t Seek Seat on U.N. Rights Panel,” *Los Angeles Times*, April 7, 2006, p. 22.

⁵¹ Some countries, such as Argentina, the European Union, New Zealand, and the United States, supported the requirement of a two-thirds majority vote in the General Assembly for election to the Council instead of an absolute majority.

⁵² Ibid.

⁵³ In a Kremlin International News Broadcast interview on March 2, 2006, Russian Deputy Foreign Minister Alexander Yakovenko stated that the United States should be elected to the Council if it runs, and that Russia would like the United States to participate in the Council’s work.

⁵⁴ British Ambassador to the United Nations Emyr Jones Parry said that adopting a text without U.S. support “isn’t good for human rights and not particularly good for the Council,” in a March 2, 2006 Associated Press article by Edith M. Lederer titled, “European Union backs proposal for new U.N. Human Rights Council, leaving U.S. isolated.”

⁵⁵ Press briefing of Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

⁵⁶ U.N. document A/60/704, “Statement of the Ministry of Foreign Affairs of Cuba,” February 28, 2006.

Congressional Issues

U.S. Funding of the Council

Comprehensive U.N. reform is a pressing issue for Congress, and the Human Rights Council is a component of this broader U.N. reform effort. As a result, there is continued congressional interest in U.S. funding of the Council. Specifically, some Members of Congress have proposed the United States withhold a proportionate share of its assessed contributions, approximately 22 %, from the U.N. regular budget which is used to fund the Council. Since 1980, the United States has withheld proportionate shares of its contributions to the U.N. regular budget for U.N. programs and activities it has opposed. However, withholding Council funds in this manner would be a largely symbolic policy action because assessed contributions finance the entire U.N. regular budget and not specific parts of it.⁵⁷ Additionally, it is difficult to identify the portion of the regular budget that would be allocated to the Council. For example, the funding may come not only from the Human Rights section of the budget, but also from the General Assembly and Economic and Social Council Affairs and Conference Management section, and the Administration and Staff Assessment section.

In preparation for the transition from the Commission to the Council, the U.N. Secretary-General provided budget documents estimating the biennial cost of the Commission and the Council for 2006 and 2007. The two-year budget requirement for the Council was estimated at \$4,503,700, with \$4,328,700 representing new funding.⁵⁸ The difference of \$175,000 was previously budgeted for the Commission on Human Rights in 2006 and 2007.⁵⁹ If the U.S. government were to withhold a proportionate share of the Council's gross cost, the annual withholding would be estimated at \$495,407.⁶⁰

Impact of Observer Status

The ability of the United States to promote its human rights agenda within the U.N. framework may be significantly affected by its observer status and its initial policy position on the Council. Under the ECOSOC rules of procedure for non-Member State participation, the Council may invite "any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State." The invited observer status does not carry the right to vote, but allows

⁵⁷ In the past, the United States withheld certain amounts from U.N. activities and/or programs pending clarification on the exact cost or the program or activity. This was done in order to determine a more appropriate measure of the proportionate figure to withhold.

⁵⁸ The total two-year budget includes a minimum of ten weeks for formal meetings; additional personnel requirements for review of Council mechanisms and mandates; and personnel requirements and resources for the periodic review of human rights records.

⁵⁹ See U.N. documents A/C.5/60/28, A/60/7Add.34, and A60/721.

⁶⁰ This estimate was calculated by taking 22% of the gross biennial cost of the Council (\$4,503,700), which equals \$990,814. This number is divided by two years to estimate the annual proportionate withholding.

the state to submit proposals which can be put forward for vote at the request of any Council member.⁶¹ Many Council members may be interested in U.S. statements and policies, but the U.S.'s inability to vote may diminish its influence on the work of the Council. As a result, the United States may have to rely on close collaboration and cooperation with like-minded countries to further its human rights agenda. In 2002, the United States held observer status on the Commission on Human Rights for the first time in its history. It was subsequently reelected from 2003 to 2006.

The Council and Allegations of U.S. Human Rights Abuses

When considering the work of the Council, Congress will likely monitor its activities related to the United States. On February 16, 2006, the U.N. Commission on Human Rights released a report on the "situation of detainees at Guantanamo Bay."⁶² The report was written by five independent rapporteurs appointed by the Chairman of the Commission on Human Rights.⁶³ It alleges, among other things, that the United States violated the human rights of prisoners held at the Guantanamo Bay Detention Center in Cuba, and that consequently the facility should be closed. According to the report, the United States is responsible for the "force-feeding of detainees on hunger strike," and using "excessive violence" when transporting detainees. The report also alleges that detainees are denied the right to "challenge the legality of their detention before a judicial body," which violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁶⁴ It requests that the five U.N. rapporteurs be granted full and unlimited access to the facility, and allowed private interviews with detainees. When researching the report, the rapporteurs collected their information from interviews with former detainees, reports from non-governmental organizations (NGOs), media reports, and a questionnaire answered by the United States. The rapporteurs did not visit the detention facility in Guantanamo Bay.

In its rebuttal of the report, the United States wrote that it is "engaged in a continuing armed conflict against Al Qaida, that the law of war applies to the conduct of that war and related detention operations."⁶⁵ The Administration rejected the findings of the report, maintaining that detainees at Guantanamo Bay are treated "humanely," and that potential human rights violations were thoroughly investigated

⁶¹ Rules of Procedure of the U.N. Economic and Social Council, part XII, rules 1-3.

⁶² U.N. document, E/CN.4/2006/120, February 15, 2006.

⁶³ The special rapporteurs include Leila Zerrougui, Chairman rapporteur of the Working Group on Arbitrary Detention; Leandro Despouy, rapporteur on the independence of judges and lawyers; Manfred Nowak, the rapporteur on torture and other cruel, inhuman or degrading treatment; Asthma Jahangir, the rapporteur on freedom of religion or belief; and Paul Hunt, the rapporteur on the right to physical and mental health.

⁶⁴ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was adopted and opened for signature by General Assembly resolution 39/46 on December 10, 1984. The Convention entered into force on June 26, 1987, and the United States became party to it on November 20, 1994.

⁶⁵ U.N. document, E/CN.4/2006/120, Annex II, p. 53-54, February 15, 2006.

by the U.S. government.⁶⁶ On July 7, 2006, the U.N. special rapporteurs, acting in their new capacity as Council experts, renewed their call for the closing of the Guantanamo Detention Center. They encouraged the United States to develop a timeline for closure of the facility, and urged U.N. Member States, the International Committee for the Red Cross (ICRC),⁶⁷ and other relevant agencies and organizations to “collaborate actively, constructively, and urgently with the United States,” to ensure the closure of the detention center.⁶⁸

Legislation Appendix

An overview of proposed legislation related to the funding and reform of the Human Rights Council in the 109th Congress follows:

H.R. 2745, The Henry J. Hyde U.N. Reform Act. In 2005, H.R. 2745 passed in the House of Representatives with a vote of 221 to 184. It would withhold 50% of U.S. assessed dues to the U.N. regular budget if a series of reforms are not implemented. Specifically, the act states that a U.N. member country would be ineligible for membership on any U.N. human rights body if it is under Security Council sanctions or under U.N. investigation for human rights abuses.

S. 1383. S. 1383 calls for “urgent and essential reform of the United Nations.” It would give the President the authority to withhold 50% of U.S. contributions to the United Nations if he determines that the United Nations is not making adequate progress on reforms. It states, among other things, that countries subjected to sanctions by the U.N. Security Council or under U.N. investigation for human rights violations should be ineligible for Council membership. The bill was introduced by Senator Norm Coleman on July 12, 2005, and was referred to the Committee on Foreign Relations.

S.Res. 419. S.Res. 419 advocates that the United States withdraw its financial support from the Human Rights Council until meaningful reforms are implemented. The resolution was introduced on March 31, 2006 by Senator Bill Frist (R-TN), and was referred to the Senate Committee on Foreign Relations.⁶⁹

⁶⁶ Press Briefing by Scott McClellan, Spokesman, The White House, February 16, 2006.

⁶⁷ Since 2002, the ICRC has visited the Guantanamo Detention Center to monitor whether detainees are treated in accordance with international law. The ICRC has stated it “remains concerned that significant problems regarding conditions and treatment at Guantanamo Bay have not been adequately addressed,” and “will pursue its discussions on these issues with the U.S. authorities.” More information on the role of ICRC at U.S. detention centers can be found at [<http://www.icrc.org>].

⁶⁸ U.N. Press Release, “U.N. Rights Experts Ask International Community to Aid with Expedient Closure of Guantanamo Detention Centre,” July 6, 2006.

⁶⁹ Representative Christopher Smith (R-NJ) opposed this resolution, stating that despite his own disappointment with the Council, “the United States cannot isolate itself from international human rights mechanisms... We must now make every effort to influence the (continued...) ”

H.R. 5476. H.R. 5476 calls for the withholding of U.S. funds from the Council. It was introduced by Representative Cliff Stearns (R-FL) on May 24, 2006, and referred to the House Committee on International Relations.

H.Amdt. 1154 to H.R. 5672. H.Amdt. 1154 proposes prohibiting funds from the administration and operation of the Council while countries designated as states sponsors of terrorism are Council members.⁷⁰ It was introduced by Representative Michael McCaul (R-TX) on June 28, 2006, and agreed to by a voice vote.

Table 1. Human Rights Council Membership by Regional Group

AFRICAN STATES (13)		LATIN AMERICAN & CARIBBEAN STATES (8)	WESTERN EUROPEAN & OTHER STATES (7)
Algeria - 2007**	Nigeria - 2009	Argentina - 2007	Canada - 2009
Cameroon - 2009	Senegal - 2009	Brazil - 2008	Finland - 2007
Djibouti - 2009	South Africa - 2007	Cuba - 2009	France - 2008
Gabon - 2008	Tunisia - 2007	Ecuador - 2007	Germany - 2009
Ghana - 2008	Zambia - 2008	Guatemala - 2008	Netherlands - 2007
Mali - 2008		Mexico - 2009	Switzerland - 2009
Mauritius - 2009		Peru - 2008	United Kingdom - 2008
Morocco - 2007		Uruguay - 2009	
ASIAN STATES (13)		EASTERN EUROPEAN STATES (6)	
Bahrain - 2007	Malaysia - 2009	Azerbaijan - 2009	
Bangladesh - 2009	Pakistan - 2008	Czech Republic - 2007	
China - 2009	Philippines - 2007	Poland - 2007	
India - 2007	Republic of Korea - 2008	Romania - 2008	
Indonesia - 2007	Saudi Arabia - 2009	Russian Federation - 2009	
Japan - 2008	Sri Lanka - 2008	Ukraine - 2008	
Jordan - 2009			

Note: Council membership is staggered by year. Members elected in the first elections drew lots to determine when their term would end. All Council members are eligible for reelection for a full second term.

* Dates represent year of term end.

⁶⁹ (...continued)

implementation of the Council.” The statement is available at [http://www.house.gov/list/press/nj04_smith/prUNHRCSENRES.html].

⁷⁰ Currently, Cuba is the only Council member designated by the Secretary of State as a state sponsor of terrorism. The 2006 membership of the Commission on Human Rights had three members identified as State Sponsors of Terrorism: Cuba, North Korea, and Sudan.